

STATE OF RHODE ISLAND

COMMISSIONER OF EDUCATION

RHODE ISLAND DEPARTMENT OF CHILDREN,
YOUTH AND FAMILIES

v.

FOSTER-GLOCESTER REGIONAL SCHOOL DISTRICT

v.

RHODE ISLAND DEPARTMENT OF EDUCATION

Ruling on Motion for Stay

A decision in this matter issued on July 7, 2014. A Motion for Stay submitted by the Foster-Glocester Regional School District was received on July 16, 2014. The Department of Children, Youth and Families (DCYF) filed an objection to the Motion for Stay on July 23, 2014.¹

The Motion for Stay presents substantive arguments that were raised in the underlying proceeding. It also asserts that DCYF will not suffer irreparable injury if it is required to continue to pay student Doe's tuition, and that the equities favor the preservation of the status quo in light of assurances made by the Department of Education in receiving federal funding pursuant to the Individuals with Disabilities Education Act.

DCYF asserts that a stay of the Commissioner's decision would prolong the lack of involvement of Doe's home school district in her education and unnecessarily prolong the fiscal burden that has been placed on DCYF.

In considering a motion to stay pending appeal, it must be determined whether the moving party has made a "strong showing" of the following four factors: "(1) it will prevail on the merits of its appeal; (2) it will suffer irreparable harm if the stay is not granted; (3) no

¹ R.I.G.L. 16-64-6 provides that in residency determination proceedings, orders of the Commissioner "shall be subject to review in the superior court in accordance with the Rhode Island Administrative Procedures Act . . ." Under §42-35-15(b), proceedings for review of a final agency order are instituted by filing a complaint in superior court. Subsection (c) states that "The filing of the complaint does not itself stay enforcement of the agency order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms."

substantial harm will come to other interested parties; and (4) a stay will not harm the public interest.” *Town of N. Kingstown v. Int’l Ass’n of Firefighters, Local 1651*, 65 A.3d 480, 481 (R.I. 2013) (quoting *Narragansett Elec. Co. v. Harsch*, 117 R.I. 940, 942, 367 A.2d 195, 197 (1976)).

Our view of the merits of Foster-Glocester’s substantive arguments has not changed. No showing has been made that Foster-Glocester’s payment of its per-pupil special education cost to the Bennington School will result in irreparable injury. Any federal education funding consequences flowing from the Family Court’s placement of Doe can be rectified. Student Doe, on the other hand, continues to be disadvantaged by the lack of participation of her local education agency in her education. We therefore find that Foster-Glocester has failed to make the requisite strong showing that the circumstances herein favor the granting of a stay pending appeal.

Accordingly, the Foster-Glocester Regional School District’s motion to stay the Commissioner’s decision of July 7, 2014 is denied.

Paul E. Pontarelli
Hearing Officer

Deborah A. Gist
Commissioner of Education

Date: August 12, 2014

